

Remarks

Claims 1-16, 33-54 and 62-102 have been allowed. Applicant respectfully requests the Examiner to review and consider the attached Information Disclosure Statement filed herewith view of the following remarks.

Information Disclosure Statement

Applicant submits herewith an Affidavit of Howard J. Kuster, Jr., dated September 22, 2004, ("Affidavit") in compliance with 37 C.F.R. § 1.56. This Affidavit was recently provided to Applicant in connection with a litigation involving U.S. Patent No. 6,308,728 and/or U.S. Patent No. 6,395,417. Applicant notes that the affidavit includes various "statements" and "documentation" purportedly as evidence of the conception by Mr. Kuster of the subject matter of these patents. In particular, the Affidavit includes statements alleging that Mr. Kuster "recommended using a flexible liner made of heat-weldable, acid-proof roofing material", (Affidavit, ¶ 6, II. 10-11) and that Mr. Kuster conceived of "L'-shaped and corner barrier segments with slots within the vertical and/or horizontal portions thereof to allow for adjustability of rails..." (Affidavit, ¶ 5, II. 2-4). One or more of the claims in the pending application include these (or similar) elements.

Applicant does not believe that Mr. Kuster is a co-inventor of any of the pending claims and that this litigation-induced Affidavit does not have sufficient corroboration to warrant further consideration. Nonetheless, Applicant requests that the Examiner consider whether a determination of a Correction of Inventorship under 35 U.S.C. § 1.116 is justified based on this Affidavit. If so, Applicant would be happy to provide additional information as necessary.

Conclusion

Applicant submits that the application is now in condition for allowance. Notice to that effect is requested. If the Examiner believes, for any reason, that personal communication will expedite prosecution of this application, the Examiner is invited to telephone the undersigned representative at the number provided.

Dated: December 3, 2004

Respectfully submitted,



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INFORMATION DISCLOSURE CITATION IN AN APPLICATION

Form PTO-1449

Docket Number	Application Number
026666-0313147	09/960,759
Applicant(s)	
Douglas FRAZIER	
Filing Date	Group Art Unit
September 21, 2001	3753

U.S. PATENT DOCUMENTS

FOREIGN PATENT DOCUMENTS

OTHER DOCUMENTS (*Including Author, Title, Date, Pertinent Pages, Etc.*)

A Affidavit of Howard J. Kuster, Jr. with Exhibits 1-11, 33 pages, dated September 22, 2004.

EXAMINER _____ DATE CONSIDERED _____

EXAMINER: Initial if citation considered, whether or not citation is in conformance with MPEP Section 609; Draw line through citation if not in conformance and not considered. Include copy of this form with next communication to Applicant.